

## **September 28, 2010 BZA Minutes**

### **STAFFORD COUNTY BOARD OF ZONING APPEALS MINUTES September 28, 2010**

The regular meeting of the Stafford County Board of Zoning Appeals (BZA) on Tuesday, September 28, 2010, was called to order with the determination of a quorum at 7:00 p.m. by Chairman Robert C. Gibbons in the Board of Supervisors Chambers. Mr. Gibbons introduced the Board members and staff and explained to the public present, the purpose, function and process of the Board of Zoning Appeals. He asked the members of the public who planned to speak at this meeting to please stand and raise their right hand, swearing or affirming to tell the truth.

Mr. Gibbons stated the Bylaws of this Board state the applicant would be allowed up to ten minutes to state their case, the other speakers would be allowed three minutes to testify, and the applicant would be allowed three minutes for rebuttal.

Members Present: Ernest Ackermann, Robert Gibbons, Marty Hudson, Larry Ingalls, Karl D. Larson and Heather Stefl

Members Absent: Steven Apicella, Ray Davis and Paul Ortiz

Staff Present: Jeff Harvey, Director of Planning and Zoning  
Melody Musante, Senior Zoning Technician  
Aisha Hamock, Recording Secretary  
Amber Forestier, Environmental Planner

Mr. Gibbons: Are there any changes or deletions to the advertised agenda? We are going to change the order, right?

Mr. Musante: Yes sir, we are going to move number three and number four to the top of the agenda, then also hear six and seven. The outcome of those are pending on what happens with items one and two.

Mr. Gibbons: Right. Any objection by any Board members? So be it. Before we hear the first case tonight, does any Board member wish to make any declaration or statement concerning any cases being heard before the Board tonight? Mr. Ingalls?

#### **DECLARATIONS OF DISQUALIFICATIONS**

Mr. Ingalls: Mr. Chairman, in the following cases before us tonight case A10 2/1000064, Chesapeake-Stafford Associates, LLC, case V10 3/1000197, ARR, Inc., and case V10-6/1000244, Vulcan Lands, Inc. the applicant is represented by Mr. Clark Leming of law firm of Leming and Healy. Over the years and from time to time the firm that I work for Sullivan, Donahoe and Ingalls has shared the same clients with Mr. Leming and his firm. Sullivan, Donahoe and Ingalls has not worked on these projects with Mr. Leming. I do not personally represent Mr. Leming's firm or the applicants and I have not had any contact with Mr. Leming or his firm concerning any matters before this Board therefore, I am able to participate fairly, objectively and in the public interest on the cases before the Board.

Mr. Gibbons: Thank you. Anybody else?

Dr. Larson: Mr. Chairman, I visited the property in case V10- V10-3/1000197 and the related 1000198. I did not speak to anybody there but I did go visit the property.

Mr. Gibbons: Anybody else? I had contact with the Vulcan application with Mr. Leming and the reason why is to make sure that everything was in order before we scheduled a hearing tonight. My understanding is we have somebody from CBLAD here tonight?

Mrs. Musante: They are supposed to be here.

Mr. Gibbons: Okay, but they are not here yet?

Mrs. Musante: Not as of yet.

Mr. Gibbons: Alright. Okay, madam secretary, read the first case please.

#### PUBLIC HEARINGS

1. V10 4/1000238 BRUCE PHILLIPS Requests a Variance from Stafford County Code, Section 28 35, Table 3.1, "District Uses & Standards", A 1, Agricultural, of the front yard requirement for an existing single family dwelling on Assessor's Parcel 56E 13. The property is zoned A 1, Agricultural, and is located at 315 Sandy Ridge Road.

Mrs. Musante: Case V10 4/1000238, Bruce Phillips, requests a Variance from Stafford County Code, Section 28 35, Table 3.1, "District Uses & Standards", A 1, Agricultural, of the front yard requirement for an existing single family dwelling on Assessor's Parcel 56E 13. The property is zoned A 1, Agricultural, and is located at 315 Sandy Ridge Road. You have the application, the application affidavit, owner's consent form, photos of the property, lot grading plan dated October 5, 2004, house location survey dated December 11, 2005, exhibits provided by applicant, the tax map and vicinity map. The applicant is requesting a variance of the front yard requirement for a single family dwelling constructed in 2006. The property is zoned A-1 and the front yard requirement is fifty (50) feet. The permit application submission plat showed the front yard to be 59.1 feet and permit was issued in May 2005. The certificate of occupancy was issued in February 2006. The house location survey dated December 11, 2005 is different from the lot grading plan submitted with the permit application. It also has a note that there is a violation of the front setback. The encroachment is at the right front corner of the dwelling. This variance request is for five point four (5.4) feet. The applicant has indicated there is a steep slope with limited buildable area between Sandy Ridge Road and the Resource Protection Area (RPA). A permit for a single family dwelling issued May 4, 2005. Certificate of occupancy issued February 14, 2006. Permit issued June 15, 2006 to convert the garage into a family room. This permit was issued without a zoning review. Sunshine Home Builders, contractor and applicant for the single family dwelling on behalf of the current owners, applied for this same variance request on March 9, 2006. This variance was denied by the Board of Zoning Appeals on June 26, 2007. This decision was appealed to the Circuit Court by Sunshine Home Builders on July 23, 2007. A court date was scheduled in December 2007 for the final order but was withdrawn. Therefore, no decision has been rendered.

Mr. Gibbons: Any questions for the staff?

Mr. Ackermann: Do you know why the decision was withdrawn or the court date withdrawn? Is it the judge that does that or is it?

Mrs. Musante: Actually, it wasn't, it was the Attorney for Sunshine Homes actually withdrew the order so it just sits.

Mr. Ackermann: Thank you.

Mr. Gibbons: Well Melody, does that make the property non-conforming until that is resolved?

Mrs. Musante: That is correct, it is.

Mr. Gibbons: Any further questions? Okay, is the applicant here or their representative?

Bruce Phillips: Bruce Phillips and I represent the homeowners Dave and Angie Walter. We put considerable detail in the application, I am not sure if you have had the chance to read it or not but I won't go into a whole lot of detail. I am not the attorney that was originally involved in this.

Mr. Gibbons: Who was that?

Mr. Phillips: That was Mr. Nageotte.

Mr. Gibbons: Okay.

Mr. Phillips: I became involved after the Walters purchased the home after the initial application for a Variance was made and denied some time ago. I have redone the application in order to present the facts as accurately as possible, simply because we want you to have accurate information. The variance is based on, or the request for a variance is based on the topography of the lot, the extreme slope of the lot as shown in the photographs. Additionally, I don't know if you are familiar with Sandy Ridge Road but it is in South Stafford. It is in, I don't know if I would call it a remote area but it is a lightly traveled road and it is not even paved. It is a gravel road. The variance would not present any sort of danger or threat to the public even if the house is located closer than fifty feet from the road. If you look at the pictures that we presented with our application showing Sandy Ridge Road at that point, there are trees up close to the road and the house itself, as I've said, the house is far beyond the trees. The topography of the lot is shown in our Exhibits 4 and 5. Exhibit 4 shows the house from the side, Exhibit 5 shows the house from the back. Very steep terrain, Exhibit 7 is a plat of the property showing the current location of the house. It also shows where the RPA is and the buildable footprint on this lot is very small. If a variance is granted it will alleviate clearly demonstrable hardship in that strict compliance with the ordinance would unreasonably restrict the utilization of the lot. The evidence that I am going to present will be the testimony of Mr. Russell Hall who is an experienced builder with many years of experience here in Stafford County. I anticipate that Mr. Hall will testify that he has been out to the site, has examined the plat and that the house could never consistently with any sort of reasonable economy have been built if it were put twelve feet further back from the road due to the slope that is there on the yard. Due to the cost of building a foundation that would have allowed the house to be located there would have been simply prohibitive and that the house could not have reasonably been built. The adjacent property owners do not object. This morning my clients brought letters from the two property owners that live on either sides of this house and neither of them object to the current location of the house. It will not result in any detriment to adjacent property owners. Rather than recite everything in the application, we just request that the variance be granted. It is not contrary to the public interest that the burden, the hardship on the Walters, if the variance is denied, it is essentially the destruction of the house. The front of the house cannot reasonably be lopped off, the rooms that would remain would not comply with the Code, the house cannot reasonably be moved because to put the foundation twelve (12) feet further back from the road throws it into this extreme slope and the cost would simply be prohibitive to build the house there. So essentially, what we are looking at if the variance is not granted, I don't see how the Walter's can continue to live there. If you have any questions, I would be happy to answer them.

Mr. Gibbons: Any questions of the attorney? It seems to me, you've got a good memory, the last time this was before us was not the topography? It was a mistake in the application.

Mr. Phillips: That is my understanding. Yes sir, from reading the prior application.

Mr. Gibbons: So that is what we judged on if I can remember right?

Mr. Phillips: Yes sir.

Mr. Gibbons: So now it comes back as a topography issue rather than a mistake.

Mr. Phillips: Yes sir.

Mr. Gibbons: Well, what did away with the mistake?

Mr. Phillips: Sir, I am not sure, I did not file that application.

Mr. Gibbons: I see the application and I am not sure why that was done but the concern we have is the topography of the lot is extreme.

Mr. Gibbons: Are they the original owner?

Mr. Phillips: The original owner was the builder, Sunshine built it. It was not built for the Walters, it was an existing house but they are the first people to live in that...

Mr. Gibbons: Occupants.

Mr. Phillips: Yes sir.

Mr. Gibbons: Okay.

Mr. Phillips: First occupant.

Mr. Gibbons: Thank you. Any questions?

Mr. Ingalls: Of course, testing for variances, I believe, has changed since 2007. The definition and testing for "approaching confiscation" has been eliminated.

Mrs. Musante: That is correct.

Mr. Ingalls: So the law for granting variances has changed since 2007.

Mr. Phillips: Since the prior application, yes sir.

Mr. Gibbons: So how would that reflect on this?

Mr. Ingalls: Well, we can discuss that later. I am just making a point right now, we will talk about it later.

Dr. Larson: I have a question Mr. Chairman?

Mr. Gibbons: Yes sir.

Dr. Larson: In the brief and in the contract for the sale of the house, the sale of the house basically was contingent on approval of a variance for the house. Apparently for this...

Mr. Phillips: For this problem, yes sir.

Dr. Larson: So, everybody knew about it from the beginning, right? I mean the buyers knew that there house was in violation of the setback when they bought the house?

Mr. Phillips: They did.

Dr. Larson: The sale price was \$400,000 and...

Mr. Phillips: There or about, it was a full sale price as if there were no setback problem.

Dr. Larson: And then what was the actual purchase price? I thought I saw it in here.

Mr. Phillips: Close to \$400,000, I believe it was \$350,000 or \$360,000 because the appraisal did not come back with the full amount of the sales price. It was a \$400,000 sales contract, the appraisal came back for less and the sale price was for the appraised value.

Dr. Larson: Which was \$355,000, is that correct?

Mr. Phillips: I don't have that number in front of me but that sounds right, yes sir.

Dr. Larson: And then at closing, the title insurance company would not insure the encroachment?

Mr. Phillips: That's right your honor.

Dr. Larson: And the buyers were aware of that at closing as well?

Mr. Phillips: They were aware of all of this but they did not understand what it meant. They did not understand what it meant and they were assured by the builder that he would take care of it and that he would obtain a variance. They trusted him, I mean that is just what happened.

Dr. Larson: No other questions Mr. Chairman.

Mrs. Stefl: Do they have that agreement from the attorney in writing or was this a verbal, you know hand shake, hey buddy I got your back?

Mr. Phillips: It was not an agreement by the attorney, it was agreement by the builder.

Mrs. Stefl: Oh the builder, okay.

Mr. Phillips: The builder and that was verbal.

Mrs. Stefl: Okay, thank you.

Mr. Gibbons: Alright we will be right back to you in a minute. We will open up the public hearing.

Mr. Phillips: I have not appeared before you before but I do have one witness, a builder, who has been out there and determined the feasibility of being able to build on that lot ever, Mr. Hall.

Mr. Gibbons: Yes, I will bring him up in public comment.

Mr. Phillips: Great. Thank you.

Mr. Gibbons: Alright, so we'll open the public hearing now and I will go with you first Mr. Hall.

Russell Hall: Hi, I am Russell Hall, Russell Hall Company; I live in Stafford, Virginia. I visited the site in November of 2008. Mr. Phillips had asked me to go over and look at the house and see what I thought the lot and the house location and everything like that. In the first and I wrote a letter, which you do have in your file. My first opinion on seeing the lot was that it was an unbuildable lot, that it was a hardship lot. I have been building for close to fifty (50) years, I am sixty-seven (67) years old. I have done everything from major commercial to working for the Valentine Museum for Virginia Antiquities, the whole nine yards. My exposure with unbuildable lots, I have never really liked them because I know that it is almost impossible beyond significant engineering to hit a fifty (50) foot setback on a lot with that topography. Impossible! I mean, you're going to miss nine out of ten times. That is what I saw right from the very start. I went over there again today, went over the lot trying to find a resolution and I could not find anything that would be economically feasible for the homeowner to address to make a change other than a variance. I suggested to them two years ago, a variance was the only application that they could apply for without spending a whole lot of money and we are talking about a great deal of money. The lot, to me, should have never been allowed to have been built on and if it had been allowed, it should have been watched closely.

Mr. Gibbons: Questions?

Mr. Ackermann: So, then it is your opinion that the builder should not have built the house on that lot?

Mr. Hall: I can't answer what his reasons for building on a lot, other than he was economically using up an unbuildable... A few years back the county got into allowing unbuildables to be used throughout developments in Stafford and that is how that issue came up. These lots were set aside a long time ago as unbuildables. When he decided to build, he went out there and found the lots, purchased them for nickel on the dollar and decided he was

going to build on them. I don't know what experience level he had or exactly what he planned to do other than hit the easement but he missed it, which can be done nine out of ten times.

Mr. Ackermann: So the difficulty here is that builder probably used a lot that he probably should not have used?

Mr. Hall: Yes in a lot of cases that has happened. Over the years, the County stopped using those lots because they did not fulfill any need other than water retention or easement. Most of them are culverts. That house is sitting on a culvert.

Mr. Ingalls: Mr. Hall, the house is higher than the road?

Mr. Hall: No.

Mr. Ingalls: It's not?

Mr. Hall: No.

Mr. Ingalls: Lower.

Mr. Hall: The house itself probably sits about six to eight feet above the road elevation.

Mr. Ingalls: That is what I mean.

Mr. Hall: But the yard slopes down to the house. Then there is a forty-five to fifty foot movement from the left hand corner of the house to a bump out there that sits on the back of a very steep hillside. In the building process, they twisted the house, turned the house from left to right to get it to set on the lot, you can see it. If you tried to twist it back left, you have another hillside in an area that you cannot turn the house in to without a great deal of elevation. That was the problem, when it came to doing to footprint of the house, they realized that the lot was not big enough, it is a postage stamp, to put that house on it in the straight line to make easement so they just tweaked it to the right, brought the front end around and that is where our six feet came from.

Mr. Gibbons: Okay, thank you very much.

Mr. Hall: Yes sir.

Mr. Gibbons: Is there anybody else who would like to speak for this application?

Mrs. Musante: Mr. Gibbons, I do have two letters that both are in favor of the variance if you would like to see them.

Mr. Gibbons: Yes, just pass them down when you get a chance. Anybody else that would like to speak? Anybody against the application? Hearing none, I will bring it back to the Board and I will go to the Attorney. Do you have a rebuttal now?

Mr. Phillips: The application was not presented before as one having to do with topography but that really is the key problem here. If the ordinances were strictly applied then the lot would not have been usable and buildable. So we ask that the variance be granted for that reason.

Mr. Gibbons: Okay, anybody have any questions?

Mrs. Stefl: In regards to Sunshine Builder, was this a multiple home community where they were selling or was this one that they sought out this builder to build them their home?

Mr. Phillips: They did not meet Sunshine... The Walters did not know the builder until the house was listed. The house was built then listed and that is how they came across this house and this builder. They had no prior relationship.

Mrs. Stefl: They had no... So it was not like, you know, a 400 home community kind of thing?

Mr. Phillips: No, no it is a country road with houses on either side and I think beyond this house to the dead end road in the woods, there may be another five or six houses.

Mrs. Stefl: Also built by Sunshine or private builders?

Mr. Phillips: I don't know the answer to that. I know that some of the houses are considerably older.

Mrs. Stefl: Because my concern is we might start seeing more from Sunshine if this is typical practice. So, I want to know before we possibly set any kind of precedence here.

Mr. Phillips: I wish I had that information.

Mrs. Stefl: I understand. I mean you weren't the attorney at that time with Sunshine Builders.

Mr. Phillips: No, I came in later.

Mrs. Stefl: Alright, thank you very much.

Mr. Phillips: Thank you.

Mr. Gibbons: Any other questions?

Mr. Gibbons: So, just in summary now, you are saying that the owner knew they had a problem with the house when they bought it?

Mr. Phillips: They knew that they needed a variance, they were told it would be a simple matter once the Occupancy Permit (OP) was granted and they did not understand.

Mr. Gibbons: The closing documents have nothing that says that in them?

Mr. Phillips: No, no, the closing documents, the only thing you see there is a title insurance policy that excludes this problem.

Mr. Gibbons: Wouldn't that send a red flag?

Mr. Phillip: It would to me.

Mr. Gibbons: The state of good old Virginia, you know, you have to be aware.

Mr. Phillips: That's right and I agree but it is not worth them losing their home.

Mr. Gibbons: You don't think it was a gamble on their part?

Mr. Phillips: I do not. He is a wage earner.

Mr. Gibbons: I didn't say that he was a gambler but did they gamble? You know, sometimes...

Mr. Phillips: I could see that if they had paid a lower price and had used that as a bargaining point but they didn't; they paid the full appraised value thinking they were not going to have a problem.

Mr. Gibbons: Who is the settlement attorney? Do you know?

Mr. Phillips: That was Mr. Nageotte.

Mr. Gibbons: Mr. Nageotte.

Mr. Phillips: And he did not, in fairness, he did not represent the Walter's. They were not represented in the closing.

Mr. Gibbons: Okay.

Mrs. Stefl: Except by a realtor?

Mr. Phillips: They had a realtor who did not serve them well, did not explain to them how this was a problem and what this meant. They had a realtor who said it is not going to be a problem.

Mr. Gibbons: Okay.

Mr. Phillips: Thank you.

Mr. Gibbons: Thank you. Okay, I will close the public hearing and bring it back to the Board. What are the wishes of the Board? Do you want to discuss your comment now?

Mr. Ingalls: Yes, can I ask staff one question? On the porch, what is the setback on the porch? I know porches can extend into the...

Mrs. Musante: Porches can encroach six feet.

Mr. Ingalls: How much?

Mrs. Musante: Six.

Mr. Ingalls: Six feet. So, you're going to make me do math now.

Mr. Phillips: It is a six foot porch.

Mr. Ingalls: Well, the porch is also in violation per this setback on the plat we have. It is forty-two feet and it could extend to where it would be forty-four. The porch is in violation by one point two feet if math is math with pencil not computer. So the porch is a little different than the rest of the house.

Mrs. Musante: Correct.

Mr. Ingalls: The house, he needs about a five and a half foot variance, okay?

Mrs. Musante: Correct.

MOTION:

Mr. Ingalls: I am sure I remember the case and I probably voted the way the majority did to deny the request then. I believe that request was different; we were under the old rules and regulations of court cases back then



and as I now read Section 28-350(b), there is a part of it that says "Board of Zoning Appeals may authorize a Variance under this section when a property owner can show that his property was acquired in good faith and where, by reason of the exceptional narrowness, shallowness, size or shape", and it goes on and on further "or where, by reason of exceptional topographic conditions", "or where the Board is satisfied, upon the evidence heard by it, that the granting of such variance will alleviate a clearly demonstrable hardship, as distinguished from a special privilege or convenience sought by the applicant; provided, that the variances shall be in harmony with the intended spirit and purpose of this chapter". That is in our Ordinance under that section of Stafford Code 29-350(b). I now feel like we have a different case before us then what was presented back in 2007. What we have before us tonight is a real hardship and if you go look at some of the court cases and all of us have been to BZA seminars and I think they tell you that just because somebody bought a piece of property knowing that it needed a variance is not something you can always hold against them. They still bought it in good faith and it is not something that you can't say well gee, you bought it, you knew what it was and I can't grant it. You have to look at the case, look at the facts and try to come up with a decision. That does not completely throw anything out my saying you should have known it, and if you read the record here that is presented to us, I think you really understand what went on at that particular moment in time. For all those reasons, I am going to make a motion to grant a variance for the existing home and front porch to remain in place with a 5.5 foot variance for the house and a 1.3 foot variance for the front porch.

Mr. Gibbons: You have to put a statement like you do in deeds plus or minus?

Mr. Ingalls: Well, I added a tenth of a foot, which is about that much to what he asked for and knowing how many surveys I've done, if I went back and did it tomorrow it might be one way or the other. If it is one way or the other, I don't want him back in here because now he needs that much of a variance.

Mr. Gibbons: As George Washington had it, more or less.

Mr. Ingalls: More or less. So that is my motion.

Mr. Gibbons: Do we have a second?

Mr. Hudson: Second it.

Mr. Gibbons: Yes sir. Do we have any discussion?

Mr. Ackermann: I just have a question about the previous request for a variance and we did not grant a variance in that case so is that case finished?

Mr. Gibbons: Yes, they withdrew it.

Mr. Ackermann: Because they withdrew it, it means that is actually finished. One of the things that bothers me about this is that I was here for the other case I think we made the right decision at that point and granting the variance now puts us in the position of, well the person who sold the property maybe was not the most honest about it and then their issue becomes an issue with the County rather than the person who sold them the property. I just wanted to say that.

Mr. Gibbons: Any other discussion?

Mr. Hudson: I will just say that I seconded the motion. I was not here for the case the first time around but I can clearly see how this could never happen again with Sunshine is that the County does not issue a building permit. I clearly see that this would be a confiscation of their property if they don't allow it at this point in time the way it is. I think he was in good faith, there was no reflection in the sale price that these folks took \$50,000 off because they knew they had to get a permit or variance from the County and it was the County that issued the permit for them to occupy the property. I assume the County did that in good faith. To say come before this Board and try to get a variance, on this ground that is why I seconded.

Mr. Gibbons: Okay, call for the question, all in favor say aye.

Mr. Hudson: Aye.

Mr. Ingalls: Aye.

Dr. Larson: Aye.

Mrs. Stefl: Aye.

Mr. Gibbons: Aye. All opposed?

Mr. Ackermann: Opposed.

VOTE:

The motion to grant the Variance passed 5-1.

Mr. Ackermann – No

Mr. Gibbons – Yes

Mr. Hudson – Yes

Mr. Ingalls – Yes

Dr. Larson – Yes

Mrs. Stefl – Yes

Mr. Gibbons: Okay, do you have the vote Aisha?

Ms. Hamock: Yes.

Mr. Gibbons: Good luck to you.

2. V10 5/1000242 RYAN P. MAGEE Requests a Variance from Stafford County Code, Section 28 35, Table 3.1, "District Uses & Standards", R 1, Suburban Residential, of the side yard setback and Section 28 38(c) "Performance regulations, Accessory Buildings/Structures", to allow an accessory structure to remain closer than the required ten (10) feet of any other structure on Assessor's Parcel 22D 2A 287. The property is zoned R 1, Suburban Residential, and is located at 44 Barclay Lane, Stonebridge at Widewater Subdivision.

Mr. Gibbons: Case V10 5/1000242.

Mrs. Musante: Case V10 5/1000242, Ryan P. Magee, requests a Variance from Stafford County Code Section 28 35, Table 3.1, "District Uses & Standards", R 1, Suburban Residential, of the side yard setback and Section 28 38(c) "Performance regulations, Accessory Buildings/Structures", to allow an accessory structure to remain closer than the required ten (10) feet of any other structure on Assessor's Parcel 22D 2A 287. The property is zoned R 1, Suburban Residential, and is located at 44 Barclay Lane, Stonebridge at Widewater Subdivision. You have the application, application affidavit, house location survey dated June 19, 2008, photos of the property, email from VDOT, Homeowner's Association approval letter, adjacent property owner letters, tax map and vicinity map. The applicant is requesting a variance of the required side yard setback, which is 5 feet for an accessory shed, of four feet eleven inches (4'11") and a separation variance from an existing single-family dwelling of nine feet nine inches (9'9") to allow existing twelve feet by thirty-two feet (12' x 32') accessory structure to remain. This lot is a corner lot and has a twenty (20) foot slope grading and maintenance easement along the street fronts which will not allow the placement of the accessory structure. Single-family dwelling constructed in 1991. Decks constructed in 2000 and 2001. Pool constructed in 2001. The Zoning Department received information from Public Works regarding a shed constructed without a permit. A zoning inspector verified this information and left a card at the residence for a return call. The applicant came in to inquire about the variance process as the accessory structure does not comply with the setback requirement of five (5) feet or the separation requirements of ten (10) feet.

Mr. Gibbons: Any questions of staff? Is the applicant here?

Ryan Magee: I am requesting a variance for my shed; I would like to explain because I know you're going to ask me about why I don't have a permit and the reason for that is I called the County in November of 2009 and asked about a shed and a permit for that. We did not talk about the size of the shed, unfortunately, they said you don't need a permit for a shed. I learned different. When I went to purchase a shed from Stafford Nurseries, I again asked about a permit requirement and they said they didn't know of any. Ultimately, this falls on me, I'm fine with that, however, it just stinks. I have a shed here, I got approval from the homeowners association on January 11, 2010. The order was placed the next day from Stafford nurseries for the shed, the shed was not delivered until April because of the weather of this past winter. On June 8, I received a stop work order from Stafford County, I found that I was in violation of building permits. I called Brian Deen, who works for Stafford County and we talked over the phone for some time and determined that I had a zoning violation also. I took it upon myself to go to the zoning office and seek out what I needed to do for that. The reasoning was why pay for a building permit and then have to do this. If this fails I don't need to go for the permit so that was the reasoning there. I had a VDOT easement, which is tremendous on the side of my yard, the front side. You should have a plat that has some highlighting on it that shows the available space between the house and easement, which if I were to put the shed there, I would still be here in front of you requesting a variance. I purchased this house in 2008, everything existed before that. I did not add anything, the pool was there, the deck was there, so by placing a shed, I would be in violation either way not knowing the zoning rules. Either that or I would be on top of the easement. Fortunately, I got smart with Melody and was able to look at this plat with some knowledge and contacted VDOT, received e-mails, which you all have.

Mr. Gibbons: But you did not get smart with Melody.

Mr. Magee: No, not that way. But I have quite a predicament here, I'm not going to claim hardship, if I have to get rid of the shed than I have to get rid of the shed. That is the only place I have to put it is where it currently is that I see. That is my request to you.

Mr. Gibbons: Any questions?

Mr. Ackermann: What is the purpose of the shed?

Mr. Magee: The shed is for storage. I don't know how this, this is kind of a strange thing but we moved from a smaller house to a bigger house, which was completely finished and I have nowhere to put any of this stuff. Also, garden equipment that's on the side, now it's a requirement to hide your outdoor items. I have nowhere to hide it with the side street the way it is, Birkenhead, so the shed is to keep my garden equipment, my tractor, my pressure washer and such inside of that to protect it. I put a loft in this one room that we can use and use storage for that.

Mrs. Stefl: You have what looks like, I'm looking at a picture, looks like your backyard here, I guess one of your neighbors, you must live next door to... Is that a street or a pipe stem?

Mr. Magee: I believe you're looking at Birkenhead, which is a street that connects to Bloomington.

Mrs. Stefl: Right. You have a two-story deck so in theory...

Mr. Magee: I have it as a two-story deck?

Mrs. Stefl: Well, the picture that I'm seeing is the front corner of, well it's cut off and Birkenhead.

Mr. Magee: This one here?

Mrs. Stefl: That's black-and-white I can't...

Mr. Magee: Basically, that is the steps down, it is only a one level deck.

Mrs. Stefl: But I meant that it is on the second floor.

Mr. Magee: Yes ma'am.

Mrs. Stefl: So two stories in that sense, it's not like it's on the ground so in theory you could put your lawnmower or garden equipment, or create something underneath.

Mr. Magee: I have done that. There is a grade there, it is actually a pretty good grade drop off there. I don't have that exact measurement but I have the other grade measurements.

Mrs. Stefl: Right.

Mr. Magee: In fact, along Birkenhead, it falls 75 feet, which is the rear corner of my lot. I'm sorry, 150 feet, which the rear corner of my lot along Birkenhead falls 75 inches. Neither does not sound tremendous and so you're in it looking out. That whole lot, what happened was I got this from the previous owner, Birkenhead did not exist at one point, it was a cul-de-sac at the end of Barclay and when they cut Birkenhead in, he took all the fill dirt and filled his backyard, I guess it was really quite a grade back there, so he filled it with the Birkenhead dirt but it still goes up to Birkenhead. So the back of my yard basically slopes to a drainage easement that they have, which is a big concrete thing in all kinds of animals come out of it at times.

Mrs. Stefl: Right, I have that joy of a nice little creek when it rains.

Mr. Magee: It is the greenest part of my yard.

Mrs. Stefl: I guess some just trying to understand, there is a possibility of having something...

Mr. Magee: And I do, I do have latticework under their and I have a plastic tractor trailer which is underneath there and out of view. It does not keep it out of the weather such as rain and stuff like that. Gasoline motors is a big investment and I'd like to keep it somewhere safe and secure.

Mr. Magee: They actually approved the shed and they've never questioned me for that corner...

Mrs. Stefl: Wanting it sheltered or putting away?

Mr. Magee: Right, you know it is in our HOA Bylaws.

Mrs. Stefl: Alright. Well, be careful because they can come back and I'm sure tell you later after the fact, they now want to put a seven (7) foot fence up. Thank you.

Mr. Gibbons: Any other questions? Mr. Ingalls?

Mr. Ingalls: I have a couple comments or questions. You talked about the drainage easement, I assumed you're talking about the twenty (20) foot slope grading easement and drainage along the two roads, Barclay and Birkenhead?

Mr. Magee: Yes sir.

Mr. Ingalls: Is that correct?

Mr. Magee: Yes sir.

Mr. Ingalls: Well, they're both twenty (20) foot wide, big easement I agree with that part but the way I think I read the Ordinance is that you couldn't put a shed in there anyway. That is in the front yard, accessory structures are not allowed there anyway so that has no impact on where you could locate it.

Mr. Magee: That is the one measurement in the front yard that I could but it doesn't allow it.

Mr. Ingalls: But you couldn't get it in there because you would still be in violation of our Ordinance if you put it there.

Mr. McGee: Right. Yes sir.

Mr. Ingalls: So you would still have to meet the front setback, I think it would be thirty-five (35) or twenty-five (25) or something like that because of the corner lot.

Mr. Magee: Yes sir.

Mr. Ingalls: I guess you could maybe figure out how to eliminate, let me just back up. My understanding is the reason that we have some of these rules and regulations is to provide safety for fire, light and air moving about between lots. It bothered me a little bit when you tell me that you're going to put your lawnmower and tractors in there after running them hot and you probably have gas like me and my shed and if you're shed goes up then your house goes up. They're ten (10) feet away, there might be a possibility that your house would not catch on fire and that is one of the main reasons that you want to be able to have an accessory structure to put that stuff in but you don't want it up against your house. I guess if you're innovative maybe you could figure out how you can attach the shed to the house, that would be part of your house. Now you're still in violation, they have a bigger violation because now you're house and not a shed. The shed you can be five (5) and a house you probably have to be ten (10), so it doesn't really help you but a little bit. I'm concerned about those issues. Just on a side issue, from looking at the pictures and looking at the plat that you gave us that shows a fence along Birkenhead Lane?

Mr. Magee: Yes sir.

Mr. Ingalls: That is a five or six foot board on board fence?

Mr. Magee: Yes sir.

Mr. Ingalls: Of course, that is a violation in itself, the County does not allow 6 foot tall fences, it only allows four foot in the front setback.

Mr. Magee: Oh.

Mr. Ingalls: So, on that side, twenty-five (25) feet? Is that the side facing street yard or whatever it's called?

Mrs. Musante: That's correct. twenty-five (25) feet.

Mr. Ingalls: That fence needs to be twenty-five (25) feet from the property line into your lot.

Mr. Magee: Well, that limits my property. I'm glad I did not put that fence up. We had another house in the neighborhood we moved to this house. When they put the pool in, the previous owners, the fence was created at that time and not by me.

Mr. Ingalls: Well, it is still in violation. You did not build the problem, you inherited it.

Mr. Magee: It is also an easement.

Mr. Ingalls: Yes.

Mr. Gibbons: Do you have any more good news?

Mr. Ingalls: No.

Dr. Larson: I have a question Mr. Chairman. One of the pictures shows your deck and one of my colleagues already mentioned that but it looks from this picture like you could actually put a shed on your deck. I have done that myself because of limited space under the stairway of my deck. It's not a very big shed but it works.

Mr. Magee: Are you looking at this one by chance? Oh, I gave you color. Oh I see, or you're looking, on the lower level there are two French doors out and there's a walkway where all the pool equipment is stored. I imagine we are looking at the big open spot, it is concreted right out to the pool from the two French doors.

Dr. Larson: So the French doors go under the middle of the deck? Is that what you are saying?

Mr. Magee: Under where those steps come down.

Mrs. Stefl: We see one set of doors. You're saying there is another set of doors?

Mr. Magee: Let's see what picture you might be looking at. No, there is only one set of doors in the basement.

Mr. Gibbons: Do you want to come up here and take a look at this?

Mr. Magee: Yes please. Thank you. Yeah, this is where the French doors are. They come through here, that is all concreted up, this is where I keep some of the garden equipment now. I latticed it this year to shield the stuff. It is not that big.

Dr. Larson: If I could paraphrase it for the rest of the Board, sort of in the middle of the deck on this picture is where he is currently kind of storing some of his stuff. The French doors that he talked about was more toward the right side of the deck and the picture.

Mr. Ingalls: If he builds a shed under the deck you have to remember that he still has to be ten (10) feet from the house because that would be an accessory structure. An accessory structure has to be ten (10) feet from the main structure.

Dr. Larson: Okay, well.

Mr. Magee: It is a win win, huh?

Mr. Gibbons: Why don't we open up the public hearing? We'll be right back to you after the public hearing. Would anybody that would like to speak for this application? Yes sir?

Ron Barefoot: Good evening, my name is Ron Barefoot and I live at the house next to the shed and the fence line there. Mr. Magee came to me some time back in January or February of 2010 telling me that he wanted to put in a shed and that the only place he had to put it was there because of the easement and that is obvious. He already had the six (6) foot fence around the property which encompasses the pool any he has a pool in the yard as well. I don't have a problem with the shed being there. Mr. Magee goes to a great lengths to keep his property nice and well maintained. The shed was bought and purchased to look exactly like his house, he went to great lengths to have the siding and the shingles on the roof to match his house. It is anything but an eyesore, it is a nice-looking shed. It's closer to me than anybody, I don't have a problem with it in the position that it is in now.

Mr. Gibbons: Thank you very much.

Mr. Barefoot: Anybody have any questions of me?

Mr. Gibbons: It is always good to have a good neighbor.

Mr. Barefoot: It is a well-made, well manufactured shed. It was delivered, he did not build it, there was a questionnaire about the legality of that but the shed was delivered on a flatbed truck. I watched them back and drop it and he prepared the site for it.

Mr. Gibbons: Thank you very much. Would anybody else like to speak? Okay, I don't think you have any rebuttal from your neighbors comments so I will bring it back to the Board and close the public hearing. The wishes of the Board?

MOTION:

Mr. Ackermann: In this case V10-5/1000242 I move that we do not grant a variance, I don't see that there is any extreme hardship in this case. I don't see that the shed provides anything that's necessary to his life, shall we say or to the value of his property. I think we should enforce or be consistent with the code and not grant a variance.

Mr. Gibbons: Do we have a second?

Mr. Ingalls: I'll second it.

Mr. Gibbons: Second. Discussion?

Mr. Ingalls: Well, the reason I seconded it is that I find that it would be very hard for me to come up with a reasonable hardship that we should allow this. It is a movable shed, it's on skids or something and it could certainly be removed if anybody else walked in here with a shed that I want to put it here, if I voted for it I don't know what I would say you could put it anywhere you wanted. I just don't see any hardship, I don't think the applicant gave us anything that I can hang my hat on. I realize that's a good-looking shed that if it's on there just perfect and if you ride down the road and look at it, it certainly looks nice. I think the neighbors right about that but we do have Ordinances and for reasons. I'm very uncomfortable in considering voting for it.

Mr. Gibbons: Any other discussion? Okay, we will call for the question, all in favor say aye.

Mr. Ackermann: Aye.

Mr. Ingalls: Aye.

Dr. Larson: Aye.

Mr. Gibbons: All opposed?

Mr. Hudson: Nay.

Mrs. Stefl: Nay.

Mr. Gibbons: Nay. Show of hands of who said nay. So three to three, so it fails.

Mr. Ackermann: That does not mean we grant a variance?

Mr. Gibbons: No. With a tie vote, the motion fails. You can appeal it to the court and you have 30 days in which to do that sir. If you need any documentation we will be glad to give it to you.

Mr. Ackermann: Just to clarify it, I think we should have a vote on a motion to grant the variance to see whether that would pass because all we did was say that the motion to not grant the variance did not pass. So for that purpose I would like to make a motion that we grant the variance.

Mr. Gibbons: Do we have a second?

Mrs. Stefl: Second.

Mr. Gibbons: Any discussion on that? Call for the question, all in favor say aye.

Mr. Hudson: I'm a little confused here.

Mr. Ackermann: Are you in favor of the variance or not.

Mr. Hudson: Yes, I am in favor of it but I'm questioning how someone can make a motion after that or he made one in the opposite way to make one.

Mr. Ackermann: Well, what I was trying to do was make it clear as to the disposition of their request for a variance. If you would like to make a motion to grant the variance I will yield to you.

Mr. Hudson: I just thought it was over three to three.

Mr. Ackermann: We had no decision not to grant a variance. All we decided on was that it failed. I was just trying to clear it up but if you're happy with it.

Mr. Ingalls: I think by Ordinance the request for a variance failed because it did not receive four positive votes.

Mr. Ackermann: Okay.

VOTE:

The motion to deny the Variance failed 3-3.

Mr. Ackermann – Yes  
Mr. Gibbons – No  
Mr. Hudson – No  
Mr. Ingalls – Yes  
Dr. Larson – Yes  
Mrs. Stefl – No

#### UNFINISHED BUSINESS

3. A10 5/1000198 H. CLARK LEMING Appeal of the Director of Planning and Zoning's determination at the July 7, 2010 Planning Commission meeting regarding Stafford County Code, Section 28 256(c)(1) pertaining to dedication of ultimate right of way.

Mrs. Musante: This is unfinished business, it's A10 5/1000198, H. Clark Leming, appeal of the Director of Planning and Zoning's determination at the July 7, 2010 Planning Commission meeting regarding Stafford County Code, Section 28 256(c)(1) pertaining to dedication of ultimate right of way.

Mr. Gibbons: Okay, we had a committee appointed last month of Mr. Ingalls, Dr. Ackermann and Mr. Ortiz and Mr. Ingalls do you have a report for the Board?

Mr. Ingalls: Well, Mr. Ackermann and myself exchanged e-mails, we sent copies to Mr. Ortiz and did not receive a response from him. I don't know whether my last e-mail to Mr. Ackermann suggested a motion that I thought he did not respond back to me I don't know whether he agreed.

Mr. Ackermann: I'm fine with it.

MOTION:

Mr. Ingalls: Okay. I think at the last meeting we had a motion to overturn the Planning Director's statements and he made a lot of statements at that meeting. After I thought about it, we were only going to overturn a few of his statements. He talks pretty long at the meeting so I don't know what else he might have said. The motion as I would like to have it read now is "the BZA partly supports the appeal of statements made by the Planning Director, Jeff Harvey at the July 7, 2010 Planning Commission meeting. The BZA finds that section 28-256(c)(i) of the Zoning Ordinance does not require the dedication of ultimate right of way at the time of site plan approval, and the Planning Commission and/or the Board of Supervisors can approve a Conditional Use Permit with conditions that



may include more or less right-of-way dedication and the dedication may be phased". That is what I was trying to limit it to so that we had just a part of the statement that was being appealed.

Mr. Gibbons: Would you like to put that in the form of a motion?

Mr. Ingalls: Yes, we already had a motion, I don't remember what the motion ... I read the minutes and could not figure out what our motion was from the minutes of the last meeting but I can certainly make that as a motion.

Mr. Gibbons: Dr. would you second that?

Mr. Ackermann: I second that.

Mr. Gibbons: Any discussion of what has been presented? I think it's very well thought out.

Dr. Larson: I think it is a reasonable motion Mr. Chairman.

Mr. Gibbons: I'll call for the question, all in favor say aye.

Mr. Ackermann: Aye.

Mr. Hudson: Aye.

Mr. Ingalls: Aye.

Dr. Larson: Aye.

Mrs. Stefl: Aye.

Mr. Gibbons: Aye. Okay, it passed unanimously.

VOTE:

The motion to uphold the Appeal passed 6-0.

Mr. Ackermann – Yes

Mr. Gibbons – Yes

Mr. Hudson – Yes

Mr. Ingalls – Yes

Dr. Larson – Yes

Mrs. Stefl – Yes

#### PUBLIC HEARING

4. V10 3/1000197 H. CLARK LEMING Requests a Variance from Stafford County Code, Section 28 256(c)(1), "Required standards and improvements generally", to reduce the required right of way dedication for future development on Assessor's Parcel 44 75. The property is zoned B 2, Urban Commercial, located at 1006 Warrenton Road.

Mr. Gibbons: At this time Mr. Leming would you like to withdraw your application?

Mr. Leming: Yes Mr. Chairman, we will withdraw the variance application, which I think is number one on your old agenda.

Mr. Ingalls: It is number two on the agenda

Mr. Leming: Sorry.

MOTION:

Mr. Gibbons: We need a motion to withdraw V10 3/1000197, do I have a motion?

Mrs. Stefl: Motion.

Mr. Hudson: Second.

Mr. Gibbons: I have a motion and duly seconded. All in favor say aye.

Mr. Ackermann: Aye.

Mr. Hudson: Aye.

Mr. Ingalls: Aye.

Dr. Larson: Aye.

Mrs. Stefl: Aye.

Mr. Gibbons: Aye. Okay, it passed unanimously.

VOTE:

The motion to withdraw the Variance passed 6-0.

Mr. Ackermann – Yes

Mr. Gibbons – Yes

Mr. Hudson – Yes

Mr. Ingalls – Yes

Dr. Larson – Yes

Mrs. Stefl – Yes

Mr. Gibbons: We will go to A10 1/1000030.

Mrs. Musante: Can we get clarification on 1000198? Did you uphold or overturn the decision?

Mr. Ingalls: We upheld the decision.

Mrs. Musante: And you are going to give me the statement.

Mr. Ingalls: Yes.

UNFINISHED BUSINESS

5. A10 1/1000030 CLARK LEMING Appeal of the Zoning Administrator's vesting determination dated January 14, 2010, regarding vesting of land use under the M 1, Light Industrial zoning district, Chesapeake Stafford & Associates, LLC, Assessor's Parcel 38 83H, on Venture Drive in the Wyche Industrial Park. This parcel was zoned to B 3, Office, on March 18, 2008.

Mr. Gibbons: We are going to discuss the appeal of the Zoning Administrator's vesting determination dated January 14, 2010, regarding vesting of land use under the M 1, Light Industrial Zoning District, Chesapeake

Stafford & Associates, LLC, Assessor's Parcel 38 83H, on Venture Drive in the Wyche Industrial Park. This parcel was zoned to B 3, Office, on March 18, 2008. This is the one we referred back to the Board and the Board took a little bit more time and they sent it back to us. They did not want to rezone it.

Mr. Ingalls: Are you looking for a motion?

Mr. Gibbons: Yes.

MOTION:

Mr. Ingalls: Mr. Chairman, I move that we, I always get it confused, that we overturn the Zoning Administrator's ruling that the property in question is not vested and furthermore, the vesting includes being able to develop it under the current zoning of M-1.

Mr. Gibbons: So we have a motion on the floor, do I have a second?

Mr. Hudson: Second.

Mr. Gibbons: Second, any discussion?

Mr. Ingalls: Mr. Chairman, the reason I made that motion is it has been a few months since we've had this case before us and just a very quick thing. We all know that there's a three-legged stool when lawyers get in front of us and talk about the three things that need to happen to make something vested. One is he or she is the beneficiary of a significant affirmative government act which remains in effect around development of a specific property. The landowner relies in good faith on the significant affirmative government act. Three, it incurs expensive obligations of substantial expenses due to due diligence, pursuit of the project and reliance on the significant government act. In my opinion the three significant governmental acts, they submitted a subdivision plat of two lots, one of which has been built on and developed in accordance with the M-1 zoning. They relied on faith for the significant affirmative government will act in the still of one lot to be able to develop without being able to have the vesting rights they would not be able to react, so they've relied on that and proceeded with the project. I think it was testimony when we heard it that they spent extensive funds of building roads and things to provide access and so forth, upgrading some things that were requested by the County in terms of roads so I believe that the request meets the test for vesting rights. If it doesn't then I would have to say that I do not understand the vested rights because to me it's very clear that the County should not be able stop the project; while I have two lots, one I can develop and the other were gonna stop you and you're not going to build or develop the other one under this scenario where they have, to me, met the three-legged stool test of meeting all three.

Mr. Gibbons: Any further discussion? I'll call for the question, all in favor...

Dr. Larson: Mr. Chairman, I have one other thing to add to the discussion if I may.

Mr. Gibbons: Sure.

Dr. Larson: I think part of the question last time was the significant affirmative governmental act in the development of a specific project and I have also been doing a lot of thinking and reading and I agree with Mr. Ingalls that what was done in the submission of the plan and also the fact that it is an Industrial Park, that to me, in writing meets the specific governmental act requirement. I think a reasonable person would suggest that it would have met the specific project requirement as well.

Mr. Ingalls: In my opinion, the reason I said that also is that the project wasn't a lot A and another project lot B; it was the two lots, and all remember the numbers right off, that was the project. The project was to develop an Industrial Park with two lots in it and they develop one and not the other.

Dr. Larson: That is the conclusion that I came to as well.

Mr. Gibbons: All in favor say aye.

Mr. Ackermann: Aye.

Mr. Hudson: Aye.

Mr. Ingalls: Aye.

Dr. Larson: Aye.

Mrs. Stefl: Aye.

Mr. Gibbons: Aye. All opposed? Any abstentions?

VOTE:

The motion to overturn the Zoning Administrator's ruling passed 6-0.

Mr. Ackermann – Yes

Mr. Gibbons – Yes

Mr. Hudson – Yes

Mr. Ingalls – Yes

Dr. Larson – Yes

Mrs. Stefl – Yes

#### PUBLIC HEARING

6. A10 2/1000064 – H. CLARK LEMING Appeal of the Zoning Administrator's electronic mail dated March 18, 2010, regarding reconsideration of the January 14, 2010, vesting determination for Chesapeake Stafford & Associates, LLC, Assessor's Parcel 38 83H, on Venture Drive in the Wyche Industrial Park.

Mr. Gibbons: Mr. Leming, would you be so kind as to get up and ask for item 1 to be withdrawn?

Mr. Leming: Yes sir, I'll be happy to withdraw that item as well.

Mr. Gibbons: Okay, do we have a motion please to withdraw A10 2/1000064?

MOTION:

Dr. Larson: Mr. Chairman, I will move to withdraw A10 2/1000064.

Mr. Gibbons: I have a motion on the floor, do I have a second?

Mr. Ingalls: I'm not sure that we have withdrawn it, he has withdrawn it and we are willing to accept his withdrawal.

Dr. Larson: I will amend that to say that I will accept the withdrawal.

Mr. Gibbons: Is somebody going to second this?

Mr. Hudson: I will second this.

Mr. Gibbons: Okay, thank you very much. All in favor say aye.

Mr. Ackermann: Aye.

Mr. Hudson: Aye.

Mr. Ingalls: Aye.

Dr. Larson: Aye.

Mrs. Stefl: Aye.

Mr. Gibbons: Aye. All opposed? Okay now moving right along Mr. Leming. Item 5 madam secretary.

VOTE:

The motion to withdraw A10 2/1000064 passed 6-0.

Mr. Ackermann – Yes

Mr. Gibbons – Yes

Mr. Hudson – Yes

Mr. Ingalls – Yes

Dr. Larson – Yes

Mrs. Stefl – Yes

7. V10 6/1000244 H. CLARK LEMING Request a Variance from Stafford County Code, Section 28 62(f) "Development Conditions" and 28 62(g)(2) "General Performance Criteria", to permit encroachment of the Critical Resource Protection Area for the construction of a quarry on portions of Tax Map 19 parcels 64 and 65. The property is zoned A 1, Agricultural, and M 2, Heavy Industrial, located at 80 Toluca Road and 100 Vulcan Quarry Road.

Mrs. Musante: Case V10 6/1000244, H. Clark Leming, request a Variance from Stafford County Code, Section 28 62(f) "Development Conditions" and 28 62(g)(2) "General Performance Criteria", to permit encroachment of the Critical Resource Protection Area for the construction of a quarry on portions of Tax Map 19 parcels 64 and 65. The property is zoned A 1, Agricultural, and M 2, Heavy Industrial, located at 80 Toluca Road and 100 Vulcan Quarry Road. You have the application, the application affidavit, owner's consent form, reclassification dated June 1, 2010, proffers, conditional use permit dated June 1, 2010, major water quality impact assessment, the general development plan dated March 12, 2010, various exhibits, the tax map and vicinity map. Amber Forestier is here to go over the staff report.

Mr. Gibbons: I have one question, are you from CBLAD ma'am or DEQ?

Ms. Forestier: The Chesapeake Bay Local Assistance Department (CBLAD) sir at the Department of Conservation and Recreation, this is Adrienne Kotula, she is our representative.

Mr. Gibbons: And that is under DEQ correct?

Ms. Forestier: No.

Mr. Gibbons: Separate, okay thank you.

Ms. Forestier: Just a general project description. Just the background, the pertinent background. On June 1, 2010 the Board of Supervisors approved Ordinance O10-34 which reclassified a portion of Assessor's Parcel 19-64 from A-1, Agricultural Zoning to M-1, Light Industrial Zoning. A copy of the Generalized Development Plan (GDP) which was approved as part of the reclassification is included with the application. Aquia Creek runs along the northern line and two other perennial streams are located on or adjacent to the property on tax map 19-64 and crossing over to 19-65. The associated RPA buffer encompasses approximately seventeen (17) acres. Aquia Creek and a small portion of another perennial stream are located on tax map 19-65 and the associated RPA buffer encompasses approximately thirteen and a half (13 ½) acres. To construct the project as shown on the GDP the applicant proposes the removal of one of the existing perennial streams and associated nine point two one (9.21)

acres of CRPA to allow for the expansion of the quarry and the relocation of the asphalt plant to a different area on site. Water flow from the rest of the drainage area will be redirected into a stream diversion between two berms along the periphery of the site and eventually drain into tributary number five in the northwest corner of the property. I'm not sure if you want more information on the additional information or if you have questions on that.

Mr. Gibbons: We have some sort of diagram, don't we?

Ms. Forestier: Yes sir, you do.

Mr. Gibbons: Can you point to it?

Ms. Forestier: That would be the applicant's information. I'm sure that they will be ready to show it to you when they discuss the project.

Mr. Gibbons: You can't show it to us.

Ms. Forestier: I am not sure what they brought sir.

Mr. Ingalls: Amber, could you just go over the part of your report with the staff recommendation.

Ms. Forestier: At the very end?

Mr. Ingalls: Yes.

Ms. Forestier: Yes sir. If the Board is inclined to approve this request, staff has recommended two conditions. The first addresses mitigation for the RPA buffer impacts, we have discussed it with the state representatives as well as the applicant and we have listed the potential mitigation strategies that should be considered and the order of preference that they would be considered in because this is not going to be happening anytime in the near future we believe at least, a number of years from now we understand before this project will move forward. We wanted to make it absolutely clear as to what the order would be if it happened later in the future when none of us were around anymore. The second requirement was that any of the existing RPA on-site that was not to be impacted would be clearly marked so that we could make sure that was saved.

Mr. Gibbons: It's my understanding that all three parties agree on this that you presented?

Ms. Forestier: As of earlier this afternoon, the last time we spoke, I believe so sir. Yes.

Mr. Gibbons: Mr. Leming is that correct?

Mr. Leming: That's correct.

Mr. Gibbons: Okay thank you.

Mr. Leming: We reviewed it as well.

Mr. Ingalls: Amber, the five items, you're not expecting to do all five in the order in which you would prefer.

Ms. Forestier: The preferred order, yes sir.

Mr. Ingalls: They can do this one number one?

Ms. Forestier: Yes sir.

Mr. Ingalls: If you can't do one then do number two?

Ms. Forestier: Yes sir.

Mr. Ingalls: If you can't do two then new number three.

Ms. Forestier: Basically.

Mr. Ingalls: Until it works itself out.

Ms. Forestier: A domino effect, basically yes.

Mr. Ingalls: I guess, I haven't seen what you all agreed to and after reading everything in this looking at the pictures of the pretty little stream, which I don't know who took the pictures but that was a beautiful little stream and we're going to replace it with a channelized trapezoidal ditch.

Ms. Forestier: Well, it's not exactly being replaced with it.

Mr. Ingalls: Huh? Not replaced?

Ms. Forestier: There will be mitigation, that is the whole point of this.

Mr. Ingalls: I know that you're replacing that pretty little babbling brook down to the property with a channelized trapezoidal ditch with nothing, I had not seen anything that tells me that were hit anything other than a channelized trapezoidal ditch for probably 2000 feet?

Ms. Forestier: Right, yes I guess that's the way it works when you're quarrying and digging a deep hole, they have to.

Mr. Ingalls: Can't you take that stream and put rocks in it and put plants in it so it's not a trapezoidal ditch with something a little better than that?

Ms. Forestier: That would be for the applicant to discuss because I'm not sure how that works with their other permits from the other state agencies. They have to get their permits from Department of Mines and Minerals.

Mr. Ingalls: So you don't know what they are going to do?

Ms. Forestier: I'm sorry sir?

Mr. Ingalls: We, the County, do not know what they are going to do?

Ms. Forestier: Well they could, I mean there's a possibility that they could have mitigated the stream on site somehow but I believe that...

Mr. Ingalls: We don't know what they're going to do. Yes or no?

Ms. Forestier: At this point, not exactly.

Mr. Ingalls: Okay, thank you.

Mr. Gibbons: Any questions of Amber? Thank you Amber. Mr. Leming?

Mr. Leming: Good evening Mr. Chairman and members of the Board, my name is Clark Leming and I'm here on behalf of Vulcan Materials and have done pretty well not saying anything so maybe I should continue along those lines. Let me jump right in though and correct a few misunderstandings. What I want to do is locate for you on this plat the features that are relevant to this application. This is the area that was just rezoned by the Board of

Supervisors. This is the existing quarry off 610, there is another quarry off this way that is not shown called the Hampton Pit. The Board of Supervisors negotiated this rezoning, all of this plan is a conditional use permit change to the comprehensive plan. All of this is dedicated for reservoir at the conclusion of the mining operation pursuant to the proffers and the Hampton pit, was for the first time specifically designated by a particular date by this proffer. The property that is the subject of this application is here and this red finger here at the very northern edge of the property. This is Aquia Creek here, this is the CRPA in question. There is an intermittent runoff area that goes from the northern part of the property and meanders through it and comes in the CRPA area. This is not perennial, this is the only perennial section from this point on. The purpose of the diversion is not to replace the perennial stream or the CRPA, it's not collecting that water, what it's collecting is runoff from up here that is not sufficient in itself to be perennial. The diversion is never expected to be perennial or to have consistent flow, it is a runoff area and that is the reason that structured the way it is on this side of the property. It will tie into this very small finger of perennial streams, CRPA area, it is known as tributary number five, this is known as tributary number four. Now the reason that the CRPA needs to be removed as well as the perennial stream is because it is not possible to access minerals beneath the CRPA, the runoff area without diverting this to the edge of the property. When the quarry is designed, what is perhaps the best thing to picture is an inverse wedding cake so there are stairs that come down to the bottom of the pit and the further the stairs are inward on the property, the less mine there is, the less area there is to mine in the pit. In order for this to even be feasible, the CRPA needs to be relocated. Now the asphalt plant that is co-located currently is also going to be relocated. The Conditional Use Permit, the entire proffers, every acre of the property, so ultimately it will all be mined. Initially the asphalt plant will be moved, here is the CRPA, sorry this was not in color, the asphalt plant is on this portion of the property and that is very close to the edge of the CRPA. Most of the CRPA is within the mining area. This also shows the diversion and how it would tie into the upper tributary here. There is not sufficient water flow based on the work that has been done here, the water quality impact assessment touches on this to some extent for this to be perennial. The water that currently runs through this tributary and CRPA will be impounded, that is how formation will occur and then it will be discharged into Aquia Creek and the major water quality impact assessment that came with this application demonstrates that the quality of the water that will be taken into the impoundment area and being released into the creek is better than water quality. Now that's the background, but we are required, I will come to the condition in just a minute but I think that probably it makes sense to talk about the particular procedural mechanism, animal if you will, that's before you tonight. This is the Chesapeake Bay variance, which is a little bit different than the variances that you considered earlier this evening. They are similar aspects to it but it has its own separate and distinct criteria and I don't know, with those set forth in the package, the Chesapeake Bay variance criteria? Are they in the BZA packet? They are included in our memo and I'm going to go over them. These come directly of the Zoning Ordinance. First, and this is similar to your ordinary variance, "the variance does not confer upon Vulcan in any special privileges denied to others in the overlay district". To our knowledge no other property owner has ever applied for a variance to encroach into the CRPA to access mineral resources. This is a unique instance, certainly the only time that this is occurred within the overlay district. The guidance from CBLAD really goes to issues like someone was permitted to have a swimming pool and somebody else was not permitted to have a swimming pool, so we don't think there's any question about the first prong of the test being met here. The second criterion is that the request for the variances not based on conditions or circumstances that are self-created or self-imposed. It was interesting to hear your discussion earlier, in the context of regular variances we have Supreme Court guidance and the Supreme Court guidance that we have on this indicates that we're not talking about instances where somebody comes to the Board with a zoning violation and then asks for relief in the form of a variance to correct it. Maybe that means one that they created in the instance that would distinguish it the case that you heard earlier here. In this case, what results in the condition that we're trying to grapple with here is simple geological evolution. The rock is where it is and the only way to access the rock is to remove the perennial stream and the CRPA. The variance request is the minimum necessary to afford relief, there is a great deal of CRPA on the site in addition to the nine point two (9.2) acres that are the subject of the variance. All of this area along Aquia Creek is CRPA, it is in excess of thirty-two (32) acres, none of that is being involved in this request at all or being affected. The only portion that is being removed is that that's going to be in the mining area itself. The variance request is in harmony with the purpose and the intent of the overlay district, not injurious to the neighborhood or detrimental to the public welfare, it is not a substantial detriment to the water quality. That last issue we've covered in our major water quality impact assessment. The benefit for the County, perhaps this is best demonstrated through these exhibits, a benefit for the County is what happens in the long run and that is that the reservoir is established. This is the Hampton pit...

Mr. Gibbons: What's the date on the Hampton pit?

Mr. Leming: The date on the Hampton pit is it comes to the County in 2025. This shows the parameters of the mining, these are the shelves that are actually structured around the pit and they go to the very edge for maximum usage. Now let me talk for just a minute about the condition that Mr. Ingalls is focused on. The



condition, which was worked out between staff and CBLAD and the applicant is to provide for mitigation, I'll tell you... Do you mind giving me a couple more minutes? It's not clear to me at all under the Chesapeake Bay regulations, I'm not sure exactly what the mitigation is in and of itself. Clearly as a condition to a variance you can impose certain conditions and that's what we've tried to work out here. The diversion area is not the mitigation that is mentioned in the condition in all. The mitigation that is sought in the mitigation that is envisioned under the Chesapeake Bay regulations is either on-site, re-vegetation, re-establishment of the CRPA, that is the first thing listed here. We are not real optimistic about that opportunity simply because there is not sufficient water to reestablish a perennial stream and the intended CRPA we think at any point except possibly at the very end of tributary number five that I showed you on the map there where the diversion would tie into that. The second priority is on site preservation of the existing vegetation and general proximity to Aquia Creek. There is about a five acre piece to the north and west of what is the asphalt plant site over on the other side of tributary number five and adjacent to Aquia Creek that conceivably could be used to satisfy that. So there may be five acres that could be used for mitigation purposes there. Then we go off site and you'll note that each of the three, four and five envision a wider geographical area for the off-site buffer re-vegetation and that's what it's referred to here, buffer re-vegetation, so the planting somewhere else. There is not sufficient water to do anything with the diversion area, that is why it's up that way. It is not intended to replace the babbling brook the two talked about Mr. Ingalls because that doesn't occur until somewhere else down the property depending on how was when you were there. But that is what has been developed by those who have a special interest in this, County and Vulcan Materials and CBLAD, so we hope you would give that favorable consideration. I had two other charts here but I'm not sure that they had anything significant beyond what I've already shared with you. We have a great deal of expertise here this evening so I think we can answer any questions that I think you may have. I'll stop at that point and be happy to entertain any questions.

Mr. Gibbons: Any question of the attorney?

Mr. Hudson: I just have a general question, is this just the process and then you would proceed to the state or the Department of Mining or whomever they get their mining permits from, the EPA or whoever they have to deal with runoff? This is just a step.

Mr. Leming: This is just one step, we still need to go to the Corps of Engineers and DEQ. There have been preliminary discussions. There's a lot of broad rationale for doing this the way it's proposed because this area of rock, which is then tested and found to be of sufficient quality to continue to move the mining operation further west, it's adjacent to an existing quarry. So no equipment has to be relocated, the machinery stays in the same place, it's just an opportunity to expand the resources further to the west. Virtually any area that you would designate for quarry, you're going to have to deal with the issue of RPA and stream because quarries are so large and so deep and don't permit that sort of thing to a company the mining effort. I was thinking this afternoon about the Rocky Pen Reservoir in all of the CRPA has been flooded by that and I imagine they're going to be before you at some point also to discuss the Chesapeake Bay variance for that. I know they went to the Board of Supervisors some time ago for a special exception. In this case, the County is looking long-term at the availability of mineral resources, the benefit of having these close at hand so Vulcan can continue with its operation and the potential of having the reservoir capacity at some point in the future. Specifically, we planned, somebody said something about it being years, we plan to move forward very soon. I mean as soon as we get to this process was a mitigation plan if this is acceptable to the BZA tonight, the plan will be presented in short order, we would move forward than with the site plan and then we would actually deal with the Corps permit on top of that.

Mr. Gibbons: Any other questions? Mr. Ingalls? If you believe you have any questions.

Mr. Ingalls: I got a whole list here. There's a lot of things that I agree with you on Clark and a lot of things on this project that I agree with you on. The one about, well this is where the rock is so we have to dig where the rock is, that's like saying because the tree grows beside the creek, that's where the wood is, we have to cut the tree down, which you can't do. I can't comprehend that, now at the same time, I think the biggest thing that I find in your favor is you have an existing quarry and I understand that part of it. Maybe we as a County are better off with one big quarry than five little quarries trying to fit them all around and not impact any CRPA, so I understand that. I guess, every time we get one of these I feel a little bit lost that I don't know what I'm... What you are going to really do and I don't know what I'm really saying when I say yes, if I say yes. I don't know what you are really going to do and it's almost like, we've had applicants before us that say trust me I'm going to do something. That is the way I feel about this, trust me on to do something, I don't know what I'm going to do, I don't know what you're going to do, it will be okay, trust me. I don't know whether a judge would accept a criminal saying trust me judge I'm not going to do it again. It bothers me when I have to vote and not know what I am really agreeing to.

That is some of the things that bother me. The ditch bothers me a whole lot, there is a whole lot of questions they are about... It's not going to be a simple little ditch because as I recall it started off at about elevation 250, you have to go up and around above 270 and run down the road a little ways and it gets to another 270, you're have two to one slopes that are about 60 feet long on one side of the ditch and a two to one slope is hard to maintain, hard to keep stuff out of it, from sediment getting into it and things like that. It's going to wash right down to Aquia Creek and tributary five. I have a lot of unsettling questions I'm trying to figure out how I can say yes or I can say no too about what we really approving here. Are we just saying you go do it and you all are gonna work it all out, it's going to be okay Larry, just trust me it's going to be okay.

Mr. Leming: In the context of a ten, or as the Chairman gave me, twelve minute presentation, that's a lot of territory to cover.

Mr. Ingalls: I understand.

Mr. Leming: And as an engineer, your scope is perhaps considerably broader than some others. There are answers all your questions and we do know exactly what you're going to do so there's no shortage of plans here. The narrow issue that is before the BZA is whether to grant a variance to encroach into the existing CRPA. That is the sole issue not the overall viability of the project or anything like that. Now I realize that the rationale for the project may assist to some extent in that regard but CRPA is encroached into all of the time for all kinds of different purposes and when that happens, the usual remedy is some form of mitigation and in this case that's what the condition goes to. We are removing nine point two (9.2) acres of CRPA and we're expected to replace that in some fashion or preserve an area such that nine point two (9.2) acres is not here anymore but it can be seen somewhere else. Now there are a limited number of ways to do that and still accomplish the objectives of the quarry. This is a very tight site as you can see, it's a narrow site and every foot that we come in from the west, and of course with the Board of Supervisors and the Planning Commission we have considerable debate over the buffers on the west, the location of the diversion area in relation to those buffers, the foliage that would be on the west for those purposes and work out something that was acceptable to both the Planning Commission and the Board. So this remaining piece falls within your jurisdiction. We can give you a whole lot more detail, we could give you detail ad nauseam and that may not be what the whole BZA is looking for here. We could keep you here until midnight with details, what might be helpful would be if there are specific things, like for instance you mentioned the diversion itself and how that would be structured. I think that several of the engineers that are here tonight can address that question and tell you what is contemplated and why it's not going to be an issue as far as sediment any different, in fact better, than the situation is right now. If that's a specific concern, I think we can address that. If there's another area specific concern, we can address that.

Mr. Ingalls: Like you said, the real issue is if we're going to allow you to disturb nine point two (9.2) acres of CRPA.

Mr. Leming: Right.

Mr. Ingalls: And if we do, what are you going to do to mitigate the issue? The five list tells us that you're gonna do one of those five maybe.

Mr. Leming: Well, we have to do one of them.

Mr. Ingalls: That's all we need to know.

Mr. Leming: Well, what the condition does is to delegate to the Planning Director the authority to review the plan as amended for consistency with the condition and with the regulations. That is the way it was set up, we are not at a point at this particular point in time to do the plan although that will come very shortly. The one issue that is somewhat up in the air is the coordination between this Corps permit and there will be, because were also removing a perennial stream. There will be mitigation required as a result of that to. In all likelihood there will be buffer mitigation that is required as part of that. So you'll note that there's one provision in the condition that says we don't have to mitigate because the Corps, we believe, is going to require not that we just mitigate the stream but that we mitigate the buffer where ever it is that were mitigating the stream as well. So there may be at some point these two efforts merge and the condition allows for that possibility. That is one of the unknowns is what the Corps is going to require. You know, as with any of these exercises there is a certain cart and horse question.

When we got to the Planning Commission, some of the Planning Commissioners said we'll maybe you should go to the BZA first to be sure that you should do this but I think the collective wisdom was that it is zoning first then the CUP, others might say go get your Corps permit first. There is no established sequence to go through these things. Certainly the zoning was the biggest piece of it so that's why we proceeded in this fashion.

Mr. Ingalls: Well, the replacement of the CRPA, the nine point two (9.2), that's one mitigation that you're going to do. If the Corps says I need nine (9) acres of mitigation or whatever they say, for their issue, the perennial stream, will that be in addition to our nine (9) acres? Or are you going to stack them on top of each other so that oh we did nine (9) hear for you, that's your nine (9) too and in the third people come in and say that their nine (9) too.

Mr. Leming: The bottom line is we don't know how that's going to turn out.

Mr. Ingalls: Why wouldn't you just say I'm going to do nine (9) acres of CRPA mitigation and then to do what whatever else the Corps and whoever else has jurisdiction is going to be? Why wouldn't you say were going to do both?

Mr. Leming: Because for the price of moving nine point two (9.2) CRPA acres were mitigating nine point two (9.2) acres, we don't think it is a basic principle that we should have to mitigate eighteen point four (18.4) acres. That is what the double mitigation issue with those two.

Mr. Ingalls: I assume the stream is a mitigation, the wetlands is a mitigation but it's not the CRPA. That's a separate thing.

Mr. Leming: We had this debate yesterday in a conference call, as a matter of fact. And it's still up in the air, we don't know what the result is. If we purchased mitigation credits, whatever we have to do for this mitigation at least according to CBLAD reading of this is not going to have any effect whatsoever. That is a whole separate exercise. We don't know what's going to be negotiated with the Corps as far as the mitigation for the stream is concerned.

Mr. Ingalls: I really don't care what the Corps does, as long as I get my nine (9) acres and they get their nine (9) acres but I don't want their nine (9) acres to be in my nine (9) acres.

Mr. Leming: Well, there is no question that you're going to get nine (9) acres, that is the way the condition is set up.

Mr. Ingalls: But I don't want it to be their nine (9) acres. You can't say that we're going to give you Stafford County nine (9) acres, I don't really care what they require. They could require zero.

Mr. Leming: We don't know; they may want to credit us...

Mr. Ingalls: You're going to try and stack them all on top of one another.

Mr. Gibbons: We are trying to get this in an orderly manner here. He is asking eloquently the condition of passing is nine point two (9.2) acres.

Mr. Leming: Yes.

Mr. Gibbons: That is what he wants, now where in this document can we put that?

Mr. Leming: Well, as the condition is established right now what it requires us is to mitigate the CRPA buffer impact. Now, we read that as meaning nine point two (9.2) acres and there was a priority to how that occurs.

Mr. Gibbons: He wants that in writing.

Mr. Leming: That, I think, is what the condition says.

Mr. Gibbons: No.

Mr. Ingalls: It does not say nine point two (9.2) acres.

Mr. Leming: You can say nine point two (9.2) acres if that helps.

Mr. Ingalls: I guess I want an exclusive nine point two (9.2) acres.

Mr. Leming: Well, it does not say an exclusive nine point two (9.2) acres because we don't know what else is out there if the Army Corps of Engineers says a mitigate in this particular location, it may be the same location where we are, you have an approved plan through the County for. Now, what you could say is that we will submit the plan to the County at a certain period of time so that the County knows what the plan is for its mitigation before the Corps permit comes in. We could set up that way.

Mr. Ingalls: I guess I thought you would have sit down and whoever besides the Corps and CBLAD and if anybody else has any kind of mitigation, I don't know what others are on there. You would say okay, here is what we are going to do for you and here is what we are going to do for you and here is what we are going to do for you. I am not going to bore all these people, my wife came to two meetings since she has retired and she came a month ago and she said Honey, I'm not ever going back again because you all are boring so I don't want to make it any more boring.

Mr. Leming: I am not bored.

Mr. Gibbons: Let's follow up on what you are saying here. We want that in writing, the nine point two (9.2) acres, correct?

Mr. Leming: We can say nine point two (9.2) acres.

Mr. Ingalls: I believe what it says is "prior to disturbance of CRPA the applicant shall submit a plan designed to mitigate the CRPA buffer impact". It does not say we are going to get nine (9) acres or ten (10) acres or two (2) acres or what? Does it? It doesn't say we are going to get nine (9) acres.

Mr. Leming: You can certainly say the same acreage impacted. You know if we disturb five (5) acres, it ought to be five (5) acres, if we disturb nine point two (9.2) acres then it ought be nine point two (9.2) acres. So how about simply saying we would mitigate the specific acreage disturbed.

Mr. Ingalls: Whatever it is. Yeah, I would feel a little bit more comfortable with that.

Mr. Leming: Okay.

Mr. Ingalls: Just so I know and the County ought to know, you all might submit a plan that says we can do this in two (2) acres and maybe the Planning Director would agree. I'm not sure if he would, I have more faith in him than that but I think that's a good suggestion that you had.

Mr. Gibbons: What about the stream?

Mr. Leming: The stream is Corps jurisdiction. The Corps is the one that governs the stream. This concerns just the CRPA.

Mr. Gibbons: You had some concerns about...

Mr. Ingalls: I have concerns about the stream but the stream is... It has more things attached to it and they don't know yet. I am not going to ever see it so I don't think I will ever have to worry about it but it is not going to be as nice as what we had. It is not going to be as nice as what we had.

Mr. Leming: Until the reservoir is there.

Mr. Ingalls: That's right.

Mr. Gibbons: Then we will have kinds of sprinklers and water. It might even be a Caribbean looking area when they get done. Okay, so have we got the wording down Larry?

Mr. Ingalls: I did not write it down but whatever. They are going to have to agree to it.

Mr. Leming: What I wrote down is "prior to the disturbance of CRPA the applicant shall submit a plan design to mitigate the CRPA buffer impact in the same amount as acreage disturbed".

Mr. Ingalls: As impacted, okay?

Mr. Leming: Right.

Mr. Ingalls: If it is okay with those people too?

Mr. Gibbons: What about you CBLAD, you alright with that?

Ms. Kotula: Yes

Mr. Gibbons: What about you Jeff?

Mr. Harvey: Yes.

Mr. Gibbons: Okay, so we got three votes.

Mr. Ingalls: Let me have one more comment then I am going to shut up. I guess this is very unique.

Mr. Leming: Yes.

Mr. Ingalls: You know from working with CBLAD, I don't know whether these things have come up across the state or not but like you said these things are going to come up, mining operations of any kind are most likely going to impact CRPA's. Although, we did a quarry in Spotsylvania on Ni River down there and they did not impact any CRPA as I recall, because they put a span of the creek, they did some things. Anyway, so it can be developed.

Mr. Leming: Sand and gravel is different.

Mr. Ingalls: Well, this is a rock quarry. I understand that, like you say reservoirs, we are going to impact them and we have got to figure out the way to do that because we need the rock, we need the water and there is a lot of other things out there that I have not even thought about that we need, sand and gravel, that are going to be effecting our CRPA's and we need to be able to find a way to do that and I understand that. I'm finished.

Mr. Gibbons: Okay, one other thing, I am not going to drop this now because one thing that Vulcan does do is that they are good to the neighbors. How can we take care of that creek? Is there a way you can take care of that creek? Is there some sort of vegetation that we can grow?

Mr. Leming: We are not going to do anything to tributary number five. That stays exactly as it is. Walter, why don't you come up here to talk about what we have in mind for the diversion channel because it is not intended to be a creek.

Walter Beck: Walter Beck, Vulcan Land Materials. Again, I am an Environmental Engineer for Vulcan, the reason that we have proposed to place a diversion, a conveyance channel around the site is because it's unknown if the

Corps of Engineers and DEQ will allow us to create a stream on the outside of property. We have intentions to try and create a stream but going down this road with DEQ and the Corps in the past is a good possibility that we will meet their criteria for creating a stream. If that's the case then we will have to go off-site to mitigate for that stream where creation or mitigation, restoration of a new stream is developed in a hydraulic unit code, which is either in the area adjacent to it. More than likely it would be in Stafford County somewhere for that mitigation. So yes, maybe possibly we will be able to create another stream down this diversion but it's unknown at this point in time if we can do that or not. If not, it will be an engineer channel that won't erode. It will be governed by the Department of Environmental Energy, they will make sure that there is no sediment leaving that site.

Mr. Leming: Let me show you what he's talking about here. Recall that the first priority is on site mitigation and recreation possibly of CRPA along the perennial stream. The perenniality of tributary number four comes to this point and this is considered about 300 feet from the there. Perenniality of tributary number five comes to this point and this is where the diversion will enter tributary number five, this channel here. Now this is, keep in mind what this says, this may actually be an underground pipe. The amount of water that's coming down here is not going to be significant to establish perenniality at any point along this, it's not now, it's not a perennial stream now. It doesn't start until this point. It may be possible with some other sources of water that the perenniality of tributary number five could be expanded to this point. If we can do that, that satisfies criterion number one in large part if we could extend it to that point. That is something that we were specifically asked to look at, that is completely consistent with the first priority listed. This is the area that we've been asked to look at for possible preservation so between the possible establishment of perenniality and the stream, which would include the buffer is an appropriate vegetation, this could meet our mitigation requirements and this could contribute to it also. What Walter is saying it's up to the Corps to decide whether or not this is going to be a stream, whether or not this qualifies as a perennial stream, that is the unknown. Now the way you have the condition set up, that is the first thing that we have to look at. That would reestablish the stream, we just don't know the extent of whether that's feasible at this point.

Mr. Hudson: Mr. Chairman, I hate to interject myself into this but I deal with this every week with the Corps. This is a mining operation, we mine, we do service mines, we move streams, this question is going to be... If it's this easy at the Corps, you would have done a great service because it's gotten tough over the last two years to do anything with the stream without 100 foot buffer or without some kind of mitigation that is going to be more than what you want. You guys have a mining operation, we do in our county and it's trying to expand. This is a general statement, I think we ought to try to see, that the stream issue is way out of our preference here. The Corps is going to come at you with everything, both guns blazing.

Mr. Leming: We will have hundreds of thousands of dollars invested in the Corps mitigation, you can be assured of that.

Mr. Hudson: And then you will have three (3) to four (4) years though we were going right now with getting ours.

Dr. Larson: Mr. Chairman, I have a question for perhaps Mr. Harvey. A lot of the documentation referred to future reservoirs and my question is what Vulcan says they can be used for. Are there specific plans to use these holes in the ground for reservoirs?

Mr. Harvey: Mr. Larson, the county did accept a proffer that it could be converted to that use in the future. It is uncertain, the County similar to Vulcan will have to go through a number of environmental studies to see if that is something that we can feasibly use because there will probably be a need to look at how the water is getting diverted to this quarry site for the reservoir because normal rainfall will probably fill it up to a certain level but may not get it to the level that we would ultimately want to see for a reservoir. There will be other environmental studies and other factors for us to consider before we make that decision.

Dr. Larson: Thank you.

Mr. Gibbons: You have to get a permit to take the water out of the water and that is in the Utilities Commission to take a look at this. The one good thing of the possibility of it is you can pump through the winter and collect and then you have storage for the summer, for emergency. That is the benefit of it. Any other questions?

Mr. Ingalls: I would just want to ask staff, are they are satisfied with what has worked out here because I am going to have to base my vote somewhat on that. If they are satisfied and they understand what is going on and they are satisfied on this mitigation issue then... I can sit up here all night and pick it apart.

Ms. Forestier: The options are workable and we will have some input in the Corps and DEQ review because they do have to send in a joint permit application and we will receive a copy of it and we can comment on it and be involved.

Mr. Ingalls: So you are satisfied that your recommendation with the minor change that Mr. Leming talked about is sufficient for us to vote on?

Ms. Forestier: Yes sir, we can work with that.

Mr. Ingalls: Thank you Amber.

Mr. Ackermann: Can I ask one question? When do you think this mitigation will take place, like how far in the future?

Ms. Forestier: That depends on the applicant's time line for construction.

Mr. Leming: As I indicated a few moments ago, they are going to move right ahead with the mitigation plan. It makes sense to get that into play, particularly while they are going forward with the Corps permits. They will also come forward with a site plan. As far as actual construction, presently Vulcan is working on what we call the Hampton Pit and there are some reserves still at this point. This will finish next and the end for this quarry operation is in site. Much smaller area than over here, this will probably end sooner than that but this will come to the county for reservoir potential in 2025. One reason even that late date is because we need to take the overburden, that is the dirt over here and put it somewhere in the meantime while we work on this part. As soon as the Hampton Pit is done then we will start moving to the west. The current walls, we will get into this area almost immediately. That is right along the present wall and that is right at the CRPA. So it is certainly within the foreseeable future, the quarry would expand to the west and need the area that we are focusing on this evening within a period of a decade, fifteen years.

Mr. Ingalls: May I ask Clark an easy question?

Mr. Leming: All right.

Mr. Ingalls: What do you expect the life of this new pit to be? How long is it going to last before you finish up there?

Mr. Leming: By our estimates, this would give us the ability to extend the operations about another twenty-five or thirty years, to 2075 as opposed to 2045 or 2050.

Mr. Ingalls: 2075, so that is sixty-five years from now.

Mr. Leming: No, the current reserves in various locations will take us to that point and then the new reserves take over from that point.

Mr. Ingalls: Thank you.

Mr. Gibbons: Okay, we need a motion?

MOTION:

Mr. Ingalls: I think all you are going to do is recommend that you grant the variance with the conditions as listed if you want to make that recommendation. With the one minor change that Mr. Leming agreed to.

Mr. Gibbons: All three parties agreed to.

Mr. Hudson: And that is to mitigate damage area acreage, acre per acre, with that said I make a motion Mr. Chairman for this request V10 6/1000244.

Mr. Gibbons: We have a motion on the floor by Mr. Hudson, do I have a second?

Mr. Ingalls: Second.

Mr. Gibbons: Second by Mr. Ingalls. Any further discussion? Call for the question, all in favor say aye.

Mr. Ackermann: Aye.

Mr. Hudson: Aye.

Mr. Ingalls: Aye.

Dr. Larson: Aye.

Mrs. Stefl: Aye.

Mr. Gibbons: Aye. All opposed?

VOTE:

The motion to approve the Variance passed 6-0.

Mr. Ackermann – Yes

Mr. Gibbons – Yes

Mr. Hudson – Yes

Mr. Ingalls – Yes

Dr. Larson – Yes

Mrs. Stefl – Yes

Mr. Leming: Thank you all.

Mr. Gibbons: Now, I want to on behalf of all of us here and in the County, we want to thank you for what you've done for the schools and for the children. We appreciate the good work you do.

Mr. Leming: Thank you all.

## OTHER BUSINESS

### 8. Discussion of Bylaws

Mr. Gibbons: Okay, lets continue right along here. Discussion of the Bylaws. I thought we had the Bylaws pretty well done?

Mrs. Musante: They are still in draft because they, of course you all have not approved them but the changes you will see in red, they should be ready to go. Everything should be done.

Mr. Gibbons: Okay. Please email them out.

Mr. Ackermann: They are in our packet. I move we accept them as modified.



Mr. Gibbons: Doctor, would you make a motion?

MOTION:

Mr. Ackermann: I make a motion that we accept them as modified as presented in our packet.

Mr. Gibbons: Second by? Dr. Larson, would you second that?

Dr. Larson: Actually I did not realize they were in the packet so if you would give me one minute to look over the changes.

Mr. Gibbons: Okay. While you are reading it I will go over this. The County Attorney did find a local attorney, it is with the Board to try to get permission for that.

Mr. Ackermann: Okay.

Mrs. Stefl: I did not hear what you had to say.

Mr. Gibbons: We requested the County Attorney...

Mrs. Stefl: Right, right.

Mr. Gibbons: So the County Attorney did get a candidate and it is reasonable and he has gone back to the Board to get permission. I know that everybody wanted to know that so I would say that if you want to call your Supervisor to put a plug in it would be good. I wanted to have something into the Board before we started writing letters and we did accomplish that.

Mrs. Stefl: So basically, they are seeking funding?

Mr. Gibbons: That's correct.

Mrs. Stefl: But will that end again in July?

Mr. Gibbons: Yes, it goes every fiscal year.

Mrs. Stefl: Okay. So this is something that we will have to revisit possibly next year too?

Mr. Gibbons: Yes, we will do it in the spring when it is budget time.

Mrs. Stefl: Okay.

Mr. Gibbons: Marty, what I am saying is that the County Attorney did find a candidate and he has gone to the Board to get permission. You requested that at the last meeting so I have asked for everybody if you get a chance to either write a letter or give your Board member a call.

Mr. Hudson: Okay.

Mr. Gibbons: I wanted to make that the Board had something in the sand before we called and its there. Doctor, are you alright with the Bylaws?

Dr. Larson: Yes. I will second the motion.

Mr. Gibbons: We have a second to accept the Bylaws as presented in the packet. All in favor say aye.

Mr. Ackermann: Aye.

Mr. Hudson: Aye.

Mr. Ingalls: Aye.

Dr. Larson: Aye.

Mrs. Stefl: Aye.

Mr. Gibbons: Aye. All opposed? Any abstentions?

VOTE:

The motion to approve the bylaws passed 6-0.

Mr. Ackermann – Yes

Mr. Gibbons – Yes

Mr. Hudson – Yes

Mr. Ingalls – Yes

Dr. Larson – Yes

Mrs. Stefl – Yes

#### ADOPTION OF MINUTES

9. August 24, 2010

Mr. Gibbons: You said the minutes are not in here?

Mrs. Musante: They are not complete yet?

Mr. Gibbons: Why don't we go out with a little note ahead of time .

Mrs. Musante: We were hoping still at six o'clock this evening that we were going to have them done.

Mr. Gibbons: Just look at it like a perineal stream.

#### ZONING ADMINISTRATOR REPORT

Mr. Gibbons: Zoning Administrator's report?

Mrs. Musante: She did not have a report this month.

Mr. Ackermann: Can I ask something? That memo that she sent us, what is the situation with that?

Mr. Gibbons: I don't know. I would like to have permission to write back to the Chairman and ask him.

Dr. Larson: It would be nice to have an administrator here, especially if there is a challenge.

Mr. Gibbons: Yeah, but I would like to write a note and ask for clarification on it.

Mr. Ackermann: Yes, I mean that is all I wanted, clarification as to what the... The language seems to be vague, I guess. If there is an issue it would be great to know that.

Mr. Gibbons: I will get right back to you.

Mr. Ackermann: Thank you.

Mr. Gibbons: So, I will do that this week. Anything else for the good?

Mrs. Stefl: I have a question about an issue with having alternates. I am a little bit surprised that the last meeting... I guess if I am not wanted I don't know if I should be showing up or not. Last time I was here...

Mr. Gibbons: The reason that we asked you to come is that there might be a case that somebody wants to abstain and you could fill in for that case but if you and Steven... Steve was going to write up something and bring it so why don't we wait until next month, I will schedule it.

Mrs. Stefl: Okay.

Mr. Gibbons: Anything else? Alright so we will stand adjourned and thank you very much.

ADJOURNMENT

With no further business, the meeting was adjourned at 9:14 P.M.

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Robert C. Gibbons, Chairman  
Board of Zoning Appeals